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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 SHIRLY A. PEACEMAKER, et al.,

12 Plaintiffs,

13 v.

14 SARA ALEGRIA,

15 Defendants.
16

No. 2:20-cv-00118-TLN-CKD PS

ORDER

17 Plaintiffs are proceeding in this action pro se. Plaintiffs have requested authority pursuant
18 to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by
19 Local Rule 302(c)(21).

20 Plaintiffs have submitted the affidavits required by § 1915(a) showing that plaintiffs are
21 unable to prepay fees and costs or give security for them. Accordingly, plaintiffs' requests to
22 proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

23 The federal in forma pauperis statute authorizes federal courts to dismiss a case if the
24 action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted,
25 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.
26 § 1915(e)(2).

27 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
28 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227–28 (9th

1 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
2 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
3 490 U.S. at 327.

4 In order to avoid dismissal for failure to state a claim a complaint must contain more than
5 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
6 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555–57 (2007). In other words,
7 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
8 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim
9 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
10 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
11 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.
12 at 1949. When considering whether a complaint states a claim upon which relief can be granted,
13 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
14 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
15 U.S. 232, 236 (1974).

16 Plaintiffs claim this suit arises under federal question jurisdiction. The allegations in the
17 complaint are insufficient to identify any conceivable federal claim. Although plaintiffs list a
18 number of federal statutes as grounds for federal question jurisdiction, see ECF No. 1 at 5, this
19 does not establish the federal claim or claims plaintiffs are attempting to raise in their complaint.

20 The court finds the allegations in plaintiffs’ complaint so vague and conclusory that it is
21 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
22 court has determined that the complaint does not contain a short and plain statement as required
23 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a
24 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones
25 v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiffs must allege with at
26 least some degree of particularity overt acts that defendant engaged in that support plaintiffs’
27 claim. Id. Because plaintiffs have failed to comply with the requirements of Fed. R. Civ. P.
28 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an amended

1 complaint.

2 If plaintiffs choose to amend the complaint, plaintiffs must set forth the jurisdictional
3 grounds upon which the court's jurisdiction depends. Federal Rule of Civil Procedure 8(a).
4 Further, plaintiffs must demonstrate how the conduct complained of has resulted in a deprivation
5 of *each* of the named plaintiffs' federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

6 In addition, plaintiffs are informed that the court cannot refer to a prior pleading in order
7 to make plaintiffs' amended complaint complete. Local Rule 220 requires that an amended
8 complaint be complete in itself without reference to any prior pleading. This is because, as a
9 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
10 F.2d 55, 57 (9th Cir. 1967). Once plaintiffs file an amended complaint, the original pleading no
11 longer serves any function in the case. Therefore, in an amended complaint, as in an
12 original complaint, each claim and the involvement of each defendant must be sufficiently
13 alleged.

14 In accordance with the above, IT IS HEREBY ORDERED that:

- 15 1. Plaintiffs' requests to proceed in forma pauperis (ECF Nos. 2, 3, and 4) are granted;
16 2. Plaintiffs' complaint (ECF No. 1) is dismissed; and
17 3. Plaintiffs are granted thirty days from the date of service of this order to file an
18 amended complaint that complies with the requirements of the Federal Rules of Civil Procedure,
19 and the Local Rules of Practice; the amended complaint must bear the docket number assigned
20 this case and must be labeled "Amended Complaint;" plaintiffs must file an original and two
21 copies of the amended complaint; failure to file an amended complaint in accordance with this
22 order will result in a recommendation that this action be dismissed.

23 Dated: February 4, 2020

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25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE
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